

Serial No. 09/614,719

Docket No. P-106

Amdt. dated December 30, 2003

Reply to Office Action of October 2, 2003

**REMARKS/ARGUMENTS**

Claims 1-5 and 8-37 are currently pending in the above-referenced patent application.

Claims 6 and 7 are canceled by way of the present Amendment. Claims 21-37 are newly added by way of the present Amendment.

**In the Office Action:** Claims 1, 8, 10 and 16 were rejected under 35 U.S.C. 102(e) as being anticipated by Chung et al. (U.S. Patent No. 6,266,781). Claims 2-7, 9, 11-15 and 17-18 were objected to as being dependent upon a rejected base claim, but were indicated as being otherwise allowable.

**In reply to the rejection of claims 1 and 8 under 35 U.S.C 102(e) as being unpatentable over Chung et al, the Applicant respectfully requests reconsideration.** These claims recite transmitting state information of either a first or a second processor by using different transmission periods.

Chung et al. discloses an application module running on a host computer in a computer network being failure-protected. This application module includes a WatchDog daemon (113), which periodically monitors the registered application to detect failure, and a SuperWatchDog daemon (115-1), which monitors each host computer in the computer network. (See Abstract) Also, the application module of Chung et al. actively sends heartbeat to the watchdog daemon either on a periodic basis or a per request basis. (See column 6, lines 31-48) However, Chung et al. fails to disclose a method of transmitting state information of either a first or a second

Amdt. dated December 30, 2003

Reply to Office Action of October 2, 2003

processor by using different transmission periods, as recited in claim 1. Rather, Chung et al. merely suggest WatchDog daemon having two failure detection mechanisms, heartbeat and polling. The Applicant respectfully requests reconsideration of the rejection of dependent claim 8, as the claim is allowable for similar reasons as set forth above in independent claim 1. At least for this reason, a *prima facie* of anticipation has not been established.

**In reply to the rejection of claim 10 under 35 U.S.C 102(e) as being unpatentable over Chung et al, the Applicant respectfully requests reconsideration.** Claim 10 recites first and second processors transmitting state information using different periods.

As noted above, Chung et al. merely discloses a method of monitoring and detecting failure, and a module sending heartbeat to the watchdog either on a periodic basis or on a per request basis. Chung et al. fails to disclose first and second processors transmitting state information using different transmission periods, as recited in claim 10. At least for this reason, a *prima facie* of anticipation has not been established.

**In reply to the rejection of claim 16 under 35 U.S.C 102(e) as being unpatentable over Chung et al, the Applicant respectfully requests reconsideration.** Claim 16 recites transmitting heartbeats of first and second processors that use different transmission periods.

As noted above, Chung et al. discloses WatchDog daemon having two failure detection mechanisms, heartbeat and polling. In addition, Chung et al. suggests that the heartbeats are sent from WatchDog daemon to the host computers, not from a first processor to a second

Amdt. dated December 30, 2003

Reply to Office Action of October 2, 2003

processor. In addition, Chung et al. does not disclose any information on using different transmission periods to transmit heartbeats. Rather, Chung et al. suggests sending a heartbeat either on a periodic basis or on a per request basis. Therefore, Chung et al. fails to disclose a method for transmitting a heartbeat of first and second processors that use different transmission periods, as recited in claim 16. At least for this reason, a *prima facie* of anticipation has not been established.

**Claims 19-20 were objected, however, the Examiner did not treat them.** Claims 19-20 are dependent upon an independent claim 16. Therefore, the Applicant respectfully requests reconsideration of the objection of dependent claims 19-20, as each of these claims is allowable for similar reasons as set forth above in independent claim 16.

**Claims 21-22 are newly added by this present Amendment.** The Examiner objected claims 6 and 7 for the numbering of these claims as not being in accordance with 37 CFR 1.126. Claims 6 and 7 are canceled and replaced claims 21 and 22 reciting substantially the same recitations as cancelled claims 6 and 7.

**The Applicant wishes to thank Examiner Bonura for the indication that claims 2-5, 9, 11-15, and 17-18 are in condition for allowance.** The Applicant recognizes the “examiner’s statement of reasons” for allowance on page 4 of the Office Action. However, the Applicant is unable to acknowledge these statements, for the purpose of prosecution history estoppel, as these statements do not correspond to the recitations of the claims word-for-word.



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Docket No. P-106

### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned, Daniel H. Sherr, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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